

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 27, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1084

Introduced by Assembly Member Adams

February 27, 2009

An act to amend Sections Section 66018 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as amended, Adams. Local planning: development projects: fees.

(1) The Mitigation Fee Act requires a local agency to hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting prior to adopting an ordinance, resolution, or other legislative enactment adopting a specified type of new fee or approving an increase in a specified type of existing fee. The act also requires the local agency to publish, in accordance with a specified provision of law, notice of the time and place of the meeting, including a general explanation of the matter to be considered. The act provides that any cost incurred by a local agency in conducting the hearing may be recovered as part of the fees which were the subject of the hearing.

This bill would additionally require a local agency that is a city, county, or city and county to mail notice of the time and place of the meeting, including a general explanation of the matter to be considered and a statement that specified data is available, at least 14 days prior to the first meetings to any interested party who has filed a written request

with the city, county, or city and county for mailed notice of meeting on new or increased fees to be enacted by the city, county, or city and county. The bill would authorize the legislative body of the city, county, or city and county to establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

The bill would also require a local agency that is a city, county, or city and county to make available to the public data indicating the amount of cost, or estimated cost, required to provide the public facilities and the revenue sources anticipated to fund those public facilities, including general fund revenues.

The bill would require any new or increased fee adopted by a local agency that is a city, county, or city and county to be effective no sooner than 60 days following the final action on the adoption or increase of the fee, unless the city, county, or city and county follows specified procedures.

The bill would authorize any person to request an audit in order to determine whether any fee or charge levied by a local agency that is a city, county, or city and county exceeds the amount reasonably necessary to cover the cost of any product, public facility, or service provided by the city, county, or city and county. The bill would authorize the legislative body of the city, county, or city and county to retain an independent auditor to conduct an audit to determine whether the fee or charge is reasonable if an audit request is made. The bill would require the city, county, or city and county, to the extent that the audit determines that the amount of any fee or charge exceeds the amount reasonably necessary to cover the cost of the product, public facility, or service, to adjust that fee or charge accordingly. The bill would authorize the city, county, or city and county to recover any costs it incurs to have the independent auditor conduct the audit. The bill would require the audit to conform to generally accepted auditing standards.

The bill would state the finding and declaration of the Legislature that oversight of local agency fees is a matter of statewide interest and concern, and the intent of the Legislature that Chapter 8 (commencing with Section 66016) of Division 1 of Title 7 of the Government Code supersede conflicting local laws and apply in charter cities.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66018 of the Government Code is
2 amended to read:

3 66018. (a) As used in this section, the following terms have
4 the following meanings:

5 (1) “Fee” means a fee as defined in Section 66000, but does not
6 include rates or charges for water, sewer, or electrical service, or
7 a fee authorized pursuant to Section 66013 or Section 17620 of
8 the Education Code.

9 (2) “Party” means a person, entity, or organization representing
10 a group of people or entities.

11 (3) “Public facility” means a public facility as defined in Section
12 66000.

13 (b) Prior to adopting an ordinance, resolution, or other legislative
14 enactment adopting a new fee or approving an increase in an
15 existing fee to which this section applies, a local agency shall hold
16 a public hearing, at which oral or written presentations can be
17 made, as part of a regularly scheduled meeting. Notice of the time
18 and place of the meeting, including a general explanation of the
19 matter to be considered, shall be published in accordance with
20 Section 6062a.

21 (c) (1) A local agency that is a city, county, or city and county
22 additionally shall mail notice of the time and place of the meeting,
23 including a general explanation of the matter to be considered and
24 a statement that the data required by subdivision (d) is available,
25 at least 14 days prior to the first meeting to any interested party
26 who has filed a written request with the city, county, or city and
27 county for mailed notice of meetings on new or increased fees to
28 be enacted by the city, county, or city and county.

29 (2) Any written request for mailed notice shall be valid for one
30 year from the date on which it is filed unless a renewal request is
31 filed. Renewal requests for mailed notice shall be required to be
32 filed on or before April 1 of each year.

33 (3) The legislative body of the city, county, or city and county
34 may establish a reasonable annual charge for sending notices based
35 on the estimated cost of providing the service.

1 (d) At least 10 days prior to the meeting, a local agency that is
2 a city, county, or city and county shall make available to the public
3 data indicating the amount of cost, or estimated cost, required to
4 provide the public facilities and the revenue sources anticipated
5 to fund those public facilities, including general fund revenues.

6 (e) Any new or increased fee adopted by a local agency that is
7 a city, county, or city and county shall be effective no sooner than
8 60 days following the final action on the adoption or increase of
9 the fee, unless the city, county, or city and county follows the
10 procedures set forth in subdivision (b) of Section 66017.

11 (f) (1) Any person may request an audit in order to determine
12 whether any fee or charge levied by a local agency that is a city,
13 county, or city and county exceeds the amount reasonably
14 necessary to cover the cost of any product, public facility, or service
15 provided by the city, county, or city and county. If an audit request
16 is made, the legislative body of the city, county, or city and county
17 may retain an independent auditor to conduct an audit to determine
18 whether the fee or charge is reasonable. To the extent that the audit
19 determines that the amount of any fee or charge exceeds the amount
20 reasonably necessary to cover the cost of the product, public
21 facility, or service, the city, county, or city and county shall adjust
22 that fee or charge accordingly.

23 (2) Any costs incurred by a city, county, or city and county by
24 having an independent auditor conduct an audit pursuant to
25 paragraph (1) of this subdivision may be recovered from the person
26 who requests the audit.

27 (3) Any audit conducted by an independent auditor pursuant to
28 paragraph (1) of this subdivision shall conform to generally
29 accepted auditing standards.

30 (g) The procedures specified in subdivisions (c) to (f), inclusive,
31 shall be alternative and in addition to those specified in Section
32 54985.

33 (h) The Legislature finds and declares that oversight of local
34 agency fees is a matter of statewide interest and concern. It is,
35 therefore, the intent of the Legislature that this chapter shall
36 supersede all conflicting local laws and shall apply in charter cities.

37 (i) Any costs incurred by a local agency in conducting the
38 hearing required pursuant to subdivision (b) may be recovered as
39 part of the fees which were the subject of the hearing.

1 (j) This section applies only to the adopting or increasing of
2 fees to which a specific statutory notice requirement, other than
3 Section 54954.2, does not apply.

4 (k) This section shall not be construed as granting any additional
5 authority to any local agency to levy any fee or charge which is
6 not otherwise authorized by law, nor shall its provisions be
7 construed as granting authority to any local agency to levy a new
8 fee or charge when otherwise specifically prohibited by law.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 a local agency or school district has the authority to levy service
12 charges, fees, or assessments sufficient to pay for the program or
13 level of service mandated by this act, within the meaning of Section
14 17556 of the Government Code.

15 ~~SECTION 1. Section 66001 of the Government Code is~~
16 ~~amended to read:~~

17 ~~66001. (a) In any action establishing, increasing, or imposing~~
18 ~~a fee as a condition of approval of a development project by a local~~
19 ~~agency, the local agency shall do all of the following:~~

20 ~~(1) Identify the purpose of the fee.~~

21 ~~(2) Identify the use to which the fee is to be put. If the use is~~
22 ~~financing public facilities, the facilities shall be identified. That~~
23 ~~identification may, but need not, be made by reference to a capital~~
24 ~~improvement plan as specified in Section 65403 or 66002, may~~
25 ~~be made in applicable general or specific plan requirements, or~~
26 ~~may be made in other public documents that identify the public~~
27 ~~facilities for which the fee is charged.~~

28 ~~(3) Determine how there is a reasonable relationship between~~
29 ~~the fee's use and the type of development project on which the fee~~
30 ~~is imposed.~~

31 ~~(4) Determine how there is a reasonable relationship between~~
32 ~~the need for the public facility and the type of development project~~
33 ~~on which the fee is imposed.~~

34 ~~(b) In any action, whether ministerial, discretionary,~~
35 ~~adjudicatory, or legislative, imposing a fee as a condition of~~
36 ~~approval of a development project by a local agency, prior to~~
37 ~~imposing the fee, the local agency shall determine how there is a~~
38 ~~reasonable relationship between the amount of the fee and the cost~~
39 ~~of the public facility or portion of the public facility attributable~~
40 ~~to the development on which the fee is imposed.~~

~~(e) Upon receipt of a fee subject to this section, the local agency shall deposit, invest, account for, and expend the fees pursuant to Section 66006. Fees may be simultaneously adopted, imposed, or collected by a city, county, or city and county to finance more than one of the categories of facilities or improvements identified in subdivision (c) of Section 66002, provided that each category of facilities or improvements separately complies with this section and those fees shall not be commingled.~~

~~(d) (1) For the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the local agency shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted:~~

~~(A) Identify the purpose to which the fee is to be put.~~

~~(B) Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.~~

~~(C) Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in paragraph (2) of subdivision (a).~~

~~(D) Designate the approximate dates on which the funding referred to in subparagraph (C) is expected to be deposited into the appropriate account or fund.~~

~~(2) When findings are required by this subdivision, they shall be made in connection with the public information required by subdivision (b) of Section 66006. The findings required by this subdivision need only be made for moneys in possession of the local agency, and need not be made with respect to letters of credit, bonds, or other instruments taken to secure payment of the fee at a future date. If the findings are not made as required by this subdivision, the local agency shall refund the moneys in the account or fund as provided in subdivision (e).~~

~~(e) Except as provided in subdivision (f), when sufficient funds have been collected, as determined pursuant to subparagraph (F) of paragraph (1) of subdivision (b) of Section 66006, to complete financing on incomplete public improvements identified in paragraph (2) of subdivision (a), and the public improvements remain incomplete, the local agency shall identify, within 180 days of the determination that sufficient funds have been collected, an approximate date by which the construction of the public improvement will be commenced, or shall refund to the then~~

1 current record owner or owners of the lots or units, as identified
2 on the last equalized assessment roll, of the development project
3 or projects on a prorated basis, the unexpended portion of the fee,
4 and any interest accrued thereon. By means consistent with the
5 intent of this section, a local agency may refund the unexpended
6 revenues by direct payment, by providing a temporary suspension
7 of fees, or by any other reasonable means. The determination by
8 the governing body of the local agency of the means by which
9 those revenues are to be refunded is a legislative act.

10 (f) If the administrative costs of refunding unexpended revenues
11 pursuant to subdivision (e) exceed the amount to be refunded, the
12 local agency, after a public hearing, notice of which has been
13 published pursuant to Section 6061 and posted in three prominent
14 places within the area of the development project, may determine
15 that the revenues shall be allocated for some other purpose for
16 which fees are collected subject to this chapter and which serves
17 the project on which the fee was originally imposed.

18 (g) A fee shall not include the costs attributable to existing
19 deficiencies in public facilities, but may include the costs
20 attributable to the increased demand for public facilities reasonably
21 related to the development project in order to (1) refurbish existing
22 facilities to maintain the existing level of service or (2) achieve an
23 adopted level of service that is consistent with the general plan.

24 (h) Any person or entity that is or may be subject to payment
25 of a fee established, increased, or imposed by a city, county, or
26 city and county in the future, including an organization representing
27 those people or entities, may request revisions or updates to those
28 fees adopted pursuant to this section. If a request is made, the city,
29 county, or city and county shall revise or update the fees in writing
30 and provide substantial evidence in the record demonstrating that
31 the new fees comply with subdivisions (a) and (b). The fees shall
32 not be required to be updated more frequently than every 12
33 months. The city, county, or city and county is not required to
34 revise or update the fees unless the person or entity requesting the
35 revision or update pays, prior to commencement of the costs that
36 will be incurred by the city, county, or city and county, to revise
37 or update the fees.

38 SEC. 2. Section 66006 of the Government Code is amended
39 to read:

1 ~~66006. (a) If a local agency requires the payment of a fee~~
2 ~~specified in subdivision (c) in connection with the approval of a~~
3 ~~development project, the local agency receiving the fee shall~~
4 ~~deposit it with the other fees for the improvement in a separate~~
5 ~~capital facilities account or fund in a manner to avoid any~~
6 ~~commingling of the fees with other revenues and funds of the local~~
7 ~~agency, except for temporary investments, and expend those fees~~
8 ~~solely for the purpose for which the fee was collected. Any interest~~
9 ~~income earned by moneys in the capital facilities account or fund~~
10 ~~shall also be deposited in that account or fund and shall be~~
11 ~~expended only for the purpose for which the fee was originally~~
12 ~~collected.~~

13 ~~(b) (1) For each separate account or fund established pursuant~~
14 ~~to subdivision (a), the local agency shall, within 180 days after the~~
15 ~~last day of each fiscal year, make available to the public the~~
16 ~~following information for the fiscal year:~~

17 ~~(A) A brief description of the type of fee in the account or fund.~~

18 ~~(B) The amount of the fee.~~

19 ~~(C) The beginning and ending balance of the account or fund.~~

20 ~~(D) The amount of the fees collected and the interest earned.~~

21 ~~(E) An identification of each public improvement on which fees~~
22 ~~were expended and the amount of the expenditures on each~~
23 ~~improvement, including the total percentage of the cost of the~~
24 ~~public improvement that was funded with fees.~~

25 ~~(F) An identification of an approximate date by which the~~
26 ~~construction of the public improvement will commence if the local~~
27 ~~agency determines that sufficient funds have been collected to~~
28 ~~complete financing on an incomplete public improvement, as~~
29 ~~identified in paragraph (2) of subdivision (a) of Section 66001,~~
30 ~~and the public improvement remains incomplete.~~

31 ~~(G) A description of each interfund transfer or loan made from~~
32 ~~the account or fund, including the public improvement on which~~
33 ~~the transferred or loaned fees will be expended, and, in the case~~
34 ~~of an interfund loan, the date on which the loan will be repaid, and~~
35 ~~the rate of interest that the account or fund will receive on the loan.~~

36 ~~(H) The amount of refunds made pursuant to subdivision (c) of~~
37 ~~Section 66001 and any allocations pursuant to subdivision (f) of~~
38 ~~Section 66001.~~

39 ~~(2) The local agency shall review the information made available~~
40 ~~to the public pursuant to paragraph (1) at the next regularly~~

~~1 scheduled public meeting not less than 15 days after this
2 information is made available to the public, as required by this
3 subdivision. Notice of the time and place of the meeting, including
4 the address where this information may be reviewed, shall be
5 mailed, at least 15 days prior to the meeting, to any interested party
6 who files a written request with the local agency for mailed notice
7 of the meeting. Any written request for mailed notices shall be
8 valid for one year from the date on which it is filed unless a renewal
9 request is filed. Renewal requests for mailed notices shall be filed
10 on or before April 1 of each year. The legislative body may
11 establish a reasonable annual charge for sending notices based on
12 the estimated cost of providing the service.~~

~~13 (e) For purposes of this section, "fee" means any fee imposed
14 to provide for an improvement to be constructed to serve a
15 development project, or which is a fee for public improvements
16 within the meaning of subdivision (b) of Section 66000, and that
17 is imposed by the local agency as a condition of approving the
18 development project.~~

~~19 (d) Any person may request an audit of any local agency fee or
20 charge that is subject to Section 66023, including fees or charges
21 of school districts, in accordance with that section.~~

~~22 (e) The Legislature finds and declares that untimely or improper
23 allocation of development fees hinders economic growth and is,
24 therefore, a matter of statewide interest and concern. It is, therefore,
25 the intent of the Legislature that this chapter shall supersede all
26 conflicting local laws and shall apply in charter cities.~~

~~27 (f) At the time the local agency imposes a fee for public
28 improvements on or in connection with a specific development
29 project, it shall identify the public improvement that the fee will
30 be used to finance. A party against whom a fee is to be imposed
31 by a city, county, or city and county shall have the opportunity for
32 a hearing to appeal the fee. The request shall state the grounds for
33 the appeal. The appeal shall be heard by the legislative body no
34 sooner than five working days following the request. The party
35 requesting the appeal shall pay the cost to the city, county, or city
36 and county to conduct the appeal.~~

~~37 SEC. 3. Section 66016 of the Government Code is amended
38 to read:~~

~~39 66016. (a) Prior to levying a new fee or service charge, or
40 prior to approving an increase in an existing fee or service charge,~~

~~1 a local agency shall hold at least one open and public meeting, at
2 which oral or written presentations can be made, as part of a
3 regularly scheduled meeting. Notice of the time and place of the
4 meeting, including a general explanation of the matter to be
5 considered, and a statement that the data required by this section
6 is available, shall be mailed at least 45 days prior to the first
7 meeting to any interested party who files a written request with
8 the local agency for mailed notice of the meeting on new or
9 increased fees or service charges. Any written request for mailed
10 notices shall be valid for one year from the date on which it is filed
11 unless a renewal request is filed. Renewal requests for mailed
12 notices shall be filed on or before April 1 of each year. The
13 legislative body may establish a reasonable annual charge for
14 sending notices based on the estimated cost of providing the
15 service. At least 45 days prior to the first meeting, the local agency
16 shall make available to the public data indicating the amount of
17 cost, or estimated cost, required to provide the service for which
18 the fee or service charge is levied and the revenue sources
19 anticipated to provide the service, including General Fund
20 revenues. Unless there has been voter approval, as prescribed by
21 Section 66013 or 66014, no local agency shall levy a new fee or
22 service charge or increase an existing fee or service charge to an
23 amount that exceeds the estimated amount required to provide the
24 service for which the fee or service charge is levied. If, however,
25 the fees or service charges create revenues in excess of actual cost,
26 those revenues shall be used to reduce the fee or service charge
27 creating the excess.~~

~~28 (b) Any action by a local agency to levy a new fee or service
29 charge or to approve an increase in an existing fee or service charge
30 shall be taken only by ordinance or resolution. The legislative body
31 of a local agency shall not delegate the authority to adopt a new
32 fee or service charge, or to increase a fee or service charge.~~

~~33 (c) Any costs incurred by a local agency in conducting the
34 meeting or meetings required pursuant to subdivision (a) may be
35 recovered from fees charged for the services which were the subject
36 of the meeting.~~

~~37 (d) This section shall apply only to fees and charges as described
38 in Sections 51287, 56383, 65104, 65456, 65584.1, 65863.7,
39 65909.5, 66013, 66014, and 66451.2 of this code, Sections 17951,
40 19132.3, and 19852 of the Health and Safety Code, Section 41901~~

1 of the Public Resources Code, and Section 21671.5 of the Public
2 Utilities Code.

3 (e) Any judicial action or proceeding to attack, review, set aside,
4 void, or annul the ordinance, resolution, or motion levying a fee
5 or service charge subject to this section shall be brought pursuant
6 to Section 66022.

7 SEC. 4. Section 66018 of the Government Code is amended
8 to read:

9 66018. (a) Prior to adopting an ordinance, resolution, or other
10 legislative enactment adopting a new fee or increasing an existing
11 fee to which this section applies, a local agency shall hold a public
12 hearing, at which oral or written presentations can be made, as
13 part of a regularly scheduled meeting. Notice of the time and place
14 of the meeting, including a general explanation of the matter to be
15 considered, shall be published in accordance with Section 6062a.
16 Notice of the time and place of the meeting, including a general
17 explanation of the matter to be considered, and a statement that
18 the data required by this section is available shall be mailed at least
19 45 days prior to the first meeting to any interested party who files
20 a written request with the city, county, or city and county for mailed
21 notice of the meeting on new or increased fees enacted by the city,
22 county, or city and county. Any written request for mailed notices
23 shall be valid for one year from the date on which it is filed unless
24 a renewal request is filed. Renewal requests for mailed notices
25 shall be filed on or before April 1 of each year. The legislative
26 body of the city, county, or city and county may establish a
27 reasonable annual charge for sending notices based on the estimated
28 cost of providing the service. At least 45 days prior to the first
29 meeting, the city, county, or city and county shall make available
30 to the public the nexus study, or similar written report, and data
31 indicating the amount of cost, or estimated cost, required to provide
32 the public facilities, as defined in Section 66000, for which the fee
33 is proposed to be enacted or increased and the revenue sources
34 anticipated to fund those public facilities, including general fund
35 revenues. The new or increased fee shall be effective no sooner
36 than 60 days following the final action on the adoption or increase
37 of the fee.

38 (b) Any costs incurred by a local agency in conducting the
39 hearing required pursuant to subdivision (a) may be recovered as
40 part of the fees that were the subject of the hearing.

1 ~~(e) This section applies only to the adopting or increasing of~~
2 ~~fees to which a specific statutory notice requirement, other than~~
3 ~~Section 54954.2, does not apply.~~

4 ~~(d) As used in this section, “fees” do not include rates or charges~~
5 ~~for water, sewer, or electrical service.~~

6 ~~SEC. 7. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~a local agency or school district has the authority to levy service~~
9 ~~charges, fees, or assessments sufficient to pay for the program or~~
10 ~~level of service mandated by this act, within the meaning of Section~~
11 ~~17556 of the Government Code.~~